## ENGKU LEH v. CHE WOK.

[C. A. (Pretheroe Ag. C.J., Murray-Aynsley C.J. (S), and Moor J.) January 11, 1948]

[Kota Bharu — Civil Appeal No. 16 of 1947]

*Contract — Void Contract — Public policy — Law of Kelantan.*

In this case the respondent sued the appellant on a guarantee. It appeared that the guarantee was given to stifle a criminal prosecution for criminal breach of trust of certain jewellery entrusted by the respondent to the appellant.

**Held:** the agreement of guarantee sued upon was void as being contrary to public policy.

### COURT OF APPEAL.

Parties in person.

*Cur. Adv. Vult.*

The judgment of the Court was delivered by :—

**Murray-Aynsley C.J.** : — In this case the respondent sued the appellant on a guarantee a copy of which is annexed to the plaint, which is as follows :—

This agreement was made today, Saturday the 26th April 1947, between Engku Leh bin Engku Dris and Che Wok binti Awang Mat in connection with some gold articles taken i.e. (1) a pair of diamond wristlets cost $1,000 and (2) one diamond locket cost $1,000 taken on the 17th April 1947 by Che Pok binti Harun.

2. It is hereby stated and agreed that Engku Leh bin Engku Dris undertakes and agrees to have the above mentioned articles returned within ten days from the date of this agreement and failing which the said Engku Leh bin Engku Dris agrees to pay the cost of the above-mentioned articles in the sum of $2,000 to Che Wok binti Awang Mat.

3. As in good faith and in earnest the said Engku Leh bin Engku Dris in good health and sound mind allows Che Wok binti Awang Mat to manage and make use his rubber land bearings Lot No. AA 9/38, AA 11/41 and AA 12/41 as stated in a letter from Penggawa Mohamed bin Abdul Rashid of Batu Sebutir in the District of Pasir Puteh, Kelantan, so as to enable her to recover the cost of the above-mentioned articles according to what the law allows.

4. In conclusion and in order to put this agreement into effect, Engku Leh bin Engku Dris and Che Wok binti Awang Mat affixed their signatures hereunder.

Sd. Engku Leh bin Engku Dris.
Sd. Che Wok binti Awang Mat.

The circumstances in which it was given are set out in the plaint :—

1. That the plaintiff is a dealer in brilliant and gold jewelleries and the first defendant went to the plaintiff's house on 17th April 1947 and received in good order one gold brilliant bangle and one gold brilliant locket, both worth $2,000 and the said defendant promised to return the said two jewelleries within one hour or to pay the said value of $2,000 to the plaintiff.

2. That as promised the said first defendant did not come and return the above said two jewelleries or did not pay the value of them as above said. The plaintiff was searching for the said first defendant for a week, but could not find her. Thereafter the plaintiff lodged a report in the police station, Kota Bharu, Kelantan, towards the said first defendant (Report Police 471/47).

3. That, on hearing the above report lodged in the Police, the said second defendant approached the plaintiff together with two others, and made an agreement on 26th April 1947 to the effect that he would return the said jewelleries or pay the amount of $2,000 as the value of the said jewelleries taken by the first defendant, to the plaintiff within ten days from date of that agreement, and as security for the repayment of the said amount of $2,000, the said second defendant secured his three pieces of rubber land Lot No. AA 9/38, AA 11/41 and AA 12/41 Mukim Batu Sebutir, Daerah Batu Sebutir, District of Pasir Puteh, Kelantan, another receipt stating that the plaintiff has given the said jewelleries to the said first defendant for sale within ten days' time.

That this guarantee was given to stifle a criminal proceeding is confirmed by the evidence of the respondent who said " I undertook not to take any criminal proceeding against the first defendant". Ibrahim bin Mahmood, one of the witnesses, said "I witnessed the agreement of 26th April between plaintiff and second defendant" (the appellant). He stood bail for the first defendant to save her from being arrested.

I remember the second defendant was reluctant to sign, but he did sign to save the first defendant from arrest by the police.

The proceedings against the first defendant were for criminal breach of trust which is not compoundable.

It appears that the claim of the respondent was one which was void both by English law and by the law of the former Federated Malay States, viz. the Contract Enactment (Cap. 52) section 23, Illustration (h). Although neither English law nor the Contract Enactment of the Federated Malay States appear to be part of the law of Kelantan where there has been no legislation on the subject, we consider that where questions of public policy of this kind are concerned, there ought, as far as possible, to be uniformity within the Malayan Union.

We find therefore that the agreement sued on is void, and this appeal must, therefore, be allowed with costs.

*Appeal allowed.*